Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

JOHN DANIELS, et al.

v.

WAYNE BURSEY, et al.

IN RE: APPEAL OF JOHN KORESKO AND ROBERT SCHMIER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FROM THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a cause of action for breach of fiduciary duty under ERISA §§ 409 and 502 is a plan asset, such that named plaintiff in a putative class action becomes a fiduciary on behalf of absent participants and the plan, and breaches its fiduciary duty when the plaintiff abandons the class action for its individual financial advantage?

2. Whether, after the filing of a motion for class certification, a former participant in an ERISA plan or the attorney for a putative class of participants has standing to protest settlement by the class plaintiff, withdrawal of class action allegations, and refusal of the district court to permit substitution of a new class representative?

   a. Does the word "bound" as used in *Lujan* mean that a party is not injured unless it would be prevented from relitigating an issue?

   b. Has the member of a putative class who participates in a case, files objections to settlement and dismissal, and requests leave to substitute a class representative, constructively intervened so as to have standing to appeal?

   c. Because of the potential for unreviewable fiduciary misconduct, should a district court review settlement of claims in an uncertified class action brought under ERISA, despite the amendments to FRCP 23(e) which indicate a district court's review is discretionary?

PARTIES TO THE PROCEEDING

A. Petitioners

JOHN KORESKO, a Pennsylvania citizen, is an attorney and Certified Public Account and is licensed in both professions to practice in the Commonwealth of Pennsylvania. At all times relevant to this case Mr. Koresko was counsel of record to Sanchez and Daniels and its partners as well as the putative class, Plaintiffs below and Robert Schmier and Schmier Feurring Properties, Inc., objectors below.

ROBERT SCHMIER is an adult individual and resident of the state of Florida and is a Principle in the business known as Schmier Feurring Properties. Mr. Schmier was a participant in the STEP Plan. He participated in the case below as an objector.

SCHMIER FEURRING PROPERTIES is a corporation and has a place of business in the state of Florida. Schmier-Feurring Properties, Inc. is an employer participant in the STEP and participated in the case below as an objector

B. Respondents

SANCHEZ & DANIELS ("SD") is an Illinois general partnership involved in the practice of law with a place of business in Chicago, Illinois

JOHN DANIELS ("DANIELS") is a general partner of SD with a place of business in Chicago, Illinois. DANIELS is a participant of the SD STEP PLAN.

MANUEL SANCHEZ ("SANCHEZ") is a general partner of SD with a place of business in Chicago, Illinois. SANCHEZ is a participant of the SD STEP PLAN

TIMOTHY HOFFMAN ("HOFFMAN") is a general partner of SD with a place of business in Chicago, Illinois. HOFFMAN is a participant of the SD STEP PLAN.

DIANE HUNTLEY ("HUNTLEY") is an employee of SD with a place of business in Chicago, Illinois. HUNTLEY is a participant of the SD STEP PLAN.

JOSEPH BONACCORSI ("BONACCORSI ") was a general partner of SD with a place of business in Chicago, Illinois. BONACCORSI is a participant of the SD STEP PLAN.

MARY OBRZUT ("OBRZUT") is an employee of SD with a place of business in Chicago, Illinois. OBRZUT is a participant of the SD STEP PLAN.

EDWARD ORDONEZ ("ORDONEZ") is an employee of SD with a place of business in Chicago, Illinois. ORDONEZ is a participant of the SD STEP PLAN.

All of the foregoing parties appeared as Plaintiffs in the case below. The following parties were all Defendants in the case below.

STEP PLAN SERVICES, INC. ("STEP SERVICES") is a Connecticut corporation. STEP SERVICES is an agent and/or affiliate of BENISTAR INSURANCE GROUP, INC. ("BENISTAR INSURANCE") a/k/a BENISTAR ("BENISTAR").

BENISTAR ADMININSTRATION SERVICES, INC. ("BENISTAR ADMIN"), is a Delaware Corporation. BENISTAR ADMIN is an agent and/or affiliate of BENISTAR and STEP SERVICES.

BENISTAR INSURANCE GROUP, INC. ("BENISTAR INSURANCE") a/k/a BENISTAR ("BENISTAR"), is a Delaware corporation.

BENISTAR 419 SERVICES is a Connecticut corporation.

BENISTAR 419 PLAN is an unincorporated entity .

BENISTAR TRUST Services is a Delaware corporation.

BENISTAR LTD is a Delaware corporation.

DANIEL CARPENTER ("CARPENTER") is a Connecticut citizen and a principal of the BENISTAR ENTITIES. CARPENTER directly or indirectly controls the BENISTAR ENTITIES and STEP SERVICES.

WAYNE BURSEY ("BURSEY") is a Connecticut citizen and a principal of BENISTAR and STEP SERVICES.

MELLON TRUST OF NEW YORK ("MELLON") is a corporation licensed to do business in the State of Illinois.

PRUDENTIAL INSURANCE COMPANY ("PRUDENTIAL") is an insurance company licensed to do business in the State of Illinois.

METLIFE, INC. ("METLIFE") is an insurance company licensed to do business in the State of Illinois.

NEW YORK LIFE INSURANCE COMPANY ("NEW YORK LIFE") is an insurance company licensed to do business in the State of Illinois.

ALLMERICA FINANCIAL BENEFIT INSURANCE COMPANY ("ALLMERICA")is an insurance company licensed to do business in the State of Illinois.

HARTFORD LIFE INSURANCE COMPANY ("HARTFORD") is an insurance company licensed to do business in the State of Illinois.

NATIONAL LIFE INSURANCE COMPANY ("NATIONAL LIFE") is an insurance company licensed to do business in the State of Illinois.

THOMAS MURPHY CLU & ASSOCIATES ("CLU") was at all relevant times an Illinois Insurance Agency licensed to do business in the State of Illinois.

THOMAS MURHY ("MURPHY") was at all relevant times, an agent of CLU and PRUDENTIAL)

UNITED STATES TRUST COMPANY ("US TRUST") is a corporation licensed to do business in the State of Illinois.

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